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 SCOTT FARLEY and KURT KERNEN  
 7  
 8

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

10 CALIFORNIANS FOR ALTERNATIVES TO  
 11 TOXICS,

12 Plaintiff,  
 13 v.  
 14 KERNEN CONSTRCUTION CO.;  
 15 BEDROCK INVESTMENTS LLC; SCOTT  
 FARLEY; and KURT KERNEN,  
 16  
 Defendants.

Case No. 4:24-cv-04067-YGR

ANSWER TO AMENDED COMPLAINT  
 FOR DECLARATORY AND INJUNCTIVE  
 RELIEF AND CIVIL PENALTIES  
 (Federal Water Pollution Control Act, 33  
 U.S.C. §§ 1241-1387)

DEMAND FOR JURY TRIAL

18 Defendants KERNAN CONSTRUCTION; BEDROCK INVESTMENTS, LLC;  
 19 SCOTT FARLEY; and KURT KERNEN (“Defendants”), by and through their counsel of record,  
 20 hereby answer Plaintiff’s Amended Complaint (“Complaint”), and allege as follows:

21 I. JURISDICTION AND VENUE.

22 1. Admit.  
 23 2. Admit that on or about March 14<sup>th</sup> 2024 plaintiff provided written notice to defendants.  
 24 Defendants have insufficient facts or information to admit or deny the remainder of this  
 25 paragraph.  
 26 3. Defendants have insufficient information to admit or deny this paragraph.  
 27 4. Admit.

28 II. INTRODUCTION.

1 5. Defendants admit the first sentence of paragraph five, but deny the remainder of this  
2 paragraph.

3 6. Deny.

4 7. Deny.

5 8. Deny.

6 9. Deny.

7 10. Deny.

8 11. Deny.

9 12. Defendants have insufficient information to admit or deny this paragraph.

10 13. Defendants have insufficient information to admit or deny this paragraph.

11 14. Defendants have insufficient information to admit or deny this paragraph.

12 15. Deny.

13 16. Deny.

14 17. Defendants have insufficient information to admit or deny.

15 III. PARTIES.

16 18. Defendants have insufficient information to admit or deny.

17 19. Defendants have insufficient information to admit or deny.

18 20. Defendants deny the first sentence of this paragraph. Defendants have insufficient  
19 information to admit or deny the second sentence in this paragraph.

20 21. Deny.

21 22. Deny.

22 23. Deny.

23 24. Deny.

24 25. Admit.

25 26. Admit.

26 27. Admit.

27 28. Admit.

28 29. Deny.

1       IV.     LEGAL BACKGROUND.2       A.     Clean Water Act.

3       30.   Admit.

4       31.   Admit.

5       32.   Admit.

6       33.   Admit.

7       34.   As phrased, defendants can neither admit or deny paragraph 34.

8       35.   Admit.

9       36.   Defendants admit the first sentence of paragraph 36. Defendants deny the last clause of  
10      this paragraph, specifically denying that 33 U.S.C. § 1365(f) states the language in this  
11      paragraph.

12      37.   Admit.

13      B.     California's General Industrial Storm Water Permit.

14      38.   Admit.

15      39.   Admit.

16      40.   Defendants lack sufficient information to admit or deny the dates in this paragraph.

17      41.   Admit.

18      42.   Admit only to the extent that facilities must comply with the terms and conditions of the  
19      permit.

20      43.   Admit.

21      44.   Admit.

22      45.   Defendants have insufficient information at this time to admit or deny this paragraph.

23      46.   Admit.

24      47.   Admit only to the extent that the general permit has numeric standards called  
25      benchmarks.

26      48.   Deny.

27      49.   Deny.

28      50.   Defendants have insufficient information at this time to admit or deny this paragraph.

1 51. Defendants have insufficient information at this time to admit or deny this paragraph.  
2 52. Defendants have insufficient information at this time to admit or deny this paragraph.  
3 53. Defendants have insufficient information at this time to admit or deny this paragraph.  
4 54. Defendants have insufficient information at this time to admit or deny this paragraph.  
5 55. Defendants have insufficient information at this time to admit or deny this paragraph.  
6 56. Defendants have insufficient information at this time to admit or deny this paragraph.  
7 57. Defendants have insufficient information at this time to admit or deny this paragraph.  
8 58. Deny as phrased.  
9 59. Defendants have insufficient information to admit or deny this paragraph.  
10 60. Deny.  
11 61. Defendants have insufficient information to admit or deny this paragraph.  
12 62. Deny.  
13 63. Admit.  
14 64. Admit.  
15 65. Admit only to the extent that minimum BMPs must be implemented to reduce or prevent  
16 discharges of pollutants.  
17 66. Admit.  
18 67. Admit.  
19 68. Defendants cannot admit or deny this paragraph as written. The sections cited to in the  
20 general permit speak for themselves.  
21 69. Defendants cannot admit or deny this paragraph as written. The sections cited to in the  
22 general permit speak for themselves.  
23 70. Defendants cannot admit or deny this paragraph as written. The sections cited to in the  
24 general permit speak for themselves.  
25 71. Admit.  
26 V. STATEMENT OF FACTS.  
27 72. Defendants admit only to the extent that plaintiff filed a first amended complaint in the  
28 case cited.

1 73. Admit.

2 74. Admit.

3 75. Admit only to the extent that Defendants admitted liability to end the litigation and to go  
4 to a no discharge status to avoid future litigation.

5 76. Admit.

6 77. Admit.

7 78. Admit.

8 79. Deny.

9 80. Deny.

10 81. Deny.

11 82. Admit.

12 83. Admit.

13 84. Admit.

14 85. Admit.

15 86. Deny.

16 87. Deny.

17 88. Deny.

18 89. Deny.

19 90. Deny.

20 91. Deny.

21 92. Admit.

22 93. Defendants cannot admit or deny as phrased.

23 94. Defendants cannot admit or deny as phrased.

24 95. Defendants cannot admit or deny as phrased.

25 96. Defendants cannot admit or deny as phrased.

26 97. Defendants cannot admit or deny as phrased.

27 98. Admit.

28 99. Admit.

1 100. Admit.  
2 101. Defendants cannot admit or deny as phrased.  
3 102. Defendants cannot admit or deny as phrased.  
4 103. Defendants cannot admit or deny as phrased.  
5 104. Deny.  
6 105. Deny.  
7 106. Deny.  
8 107. Deny.  
9 108. Deny.  
10 109. Deny.  
11 110. Deny.  
12 111. Admit.  
13 112. Admit.  
14 113. Admit.  
15 114. Deny.  
16 115. Admit.  
17 116. Deny.  
18 117. Deny.  
19 118. Deny.  
20 119. Deny.  
21 120. Deny.  
22 121. Deny.  
23 122. Deny.  
24 //  
25 //  
26 //  
27 //  
28 //

1 VI. CLAIMS FOR RELIEF.2 FIRST CLAIM FOR RELIEF

3 Defendants' Discharges of Contaminated Storm Water from the Facility  
4 in Violation of the General Permit's Effluent Limitations, Receiving Water Limitations, and  
5 Discharge Prohibitions, and the Act  
(Violations of 33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f))

6 123. Defendants cannot admit or deny this paragraph.  
7 124. Deny.  
8 125. Deny.  
9 126. Defendants have insufficient evidence or facts to admit or deny this paragraph.  
10 127. Defendants cannot admit or deny this paragraph as written because California Fish and  
11 Game code section 5650 speaks for itself as written.  
12 128. Deny.  
13 129. Deny.  
14 130. Deny.  
15 131. Deny.  
16 132. Defendants cannot admit or deny this paragraph as written. 33 U.S.C. § 1311 speaks for  
17 itself as written.  
18 133. Deny.  
19 134. Deny.  
20 135. Defendants admit the first sentence of this paragraph and deny the remainder.  
21 136. Admit.

22 SECOND CLAIM FOR RELIEF

23 Defendants' Failure to Prepare, Implement, Review, and  
24 Update a Compliant Storm Water Pollution Prevention Plan  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

25 137. Defendants cannot admit or deny this paragraph.  
26 138. Deny.  
27 139. Deny.  
28 140. Deny.  
141. Deny.



1 163. Admit

2 FIFTH CLAIM FOR RELIEF

3 Failure to Comply with the Reporting Requirements of the General Permit  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

4 164. Defendants cannot admit or deny this paragraph.

5 165. Admit.

6 166. Admit.

7 167. Admit.

8 168. Admit.

9 169. Admit.

10 170. Deny.

11 171. Defendants cannot admit or deny the first sentence of this paragraph as 33 U.S.C. § 1319  
12 speaks for itself as written. Defendants deny the remainder of this paragraph.

13 Having fully answered the Amended Complaint, the Respondents assert the following:

14 AFFIRMATIVE DEFENSE NO. 1

15 The Amended Complaint fails to state a claim upon which relief can be granted because civil  
16 penalties cannot be imposed unless there is a material violation of the Clean Water Act, and as  
17 set out herein, Defendants have not violated the Clean Water Act. *United States v. Bay-Houston*  
18 *Towing Co., Inc.*, 197 F. Supp. 2d 788 (E.D. Mich. 2002).

19 AFFIRMATIVE DEFENSE NO. 2

20 Defendants' activities have not resulted (and did not a result) in the discharge of pollutants into a  
21 "Water of the United States."

22 AFFIRMATIVE DEFENSE NO. 3

23 To the extent that Defendants' acts or omissions may, without either so admitting or denying, be  
24 in noncompliance with the Clean Water Act, those acts or omissions are de minimis in nature,  
25 have created no danger to health and public safety or human welfare, or a danger to the  
26 environment. See *United States v. Bay-Houston Towing Co., Inc.*, 197 F. Supp. 2d 788 (E.D.  
27 Mich. 2002).

28 //

## 1 AFFIRMATIVE DEFENSE NO. 4

2 Plaintiff fails to state a claim under the Clean Water Act because it cannot establish a continuing  
3 violation.

## 4 AFFIRMATIVE DEFENSE NO. 5

5 Any and all actions or omissions concerning compliance with the Clean Water Act have not  
6 resulted in any economic benefit to Defendants. *See United States v. Bay-Houston Towing Co.,*  
7 *Inc.*, 197 F. Supp. 2d 788 (E.D. Mich. 2002).

## 8 AFFIRMATIVE DEFENSE NO. 6

9 Defendants at all times acted in good faith. *See United States v. Bay-Houston Towing Co., Inc.*,  
10 197 F. Supp. 2d 788 (E.D. Mich. 2002).

11 Defendants reserve the right to further amend these pleadings and to add such further  
12 affirmative defenses as discovery and development of the case may disclose.

14 DATED: November 22, 2024

Respectfully submitted,

15 HARLAND LAW FIRM LLP

16 /s/ Allison G. Jackson

17 Allison G. Jackson

18 Attorneys for Defendants  
19 KERNAN CONSTRUCTION CO.,  
BEDROCK INVESTMENTS LLC,  
SCOTT FARLEY and KURT KERNEN  
20